

Letter of Findings: 04-20110554
Sales and Use Tax
For the Tax Years 2008-2010

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ISSUE

I. Sales and Use Tax—Manufacturing Exemption.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-3-1; IC § 6-2.5-3-2; IC § 6-2.5-3-4; IC § 6-2.5-5-3; IC § 6-2.5-5-6; IC § 6-8.1-5-1; [45 IAC 2.2-5-8](#); IAC 2.2-5-14; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Rhoads v. Indiana Dep't of State Revenue, 774 N.E.2d 1044 (Ind. Tax Ct. 2002); Indiana Dep't of State Revenue v. RCA Corp., 310 N.E.2d 96 (Ind. Ct. App. 1974); General Motors Corp. v. Indiana Dep't. of State Revenue, 578 N.E.2d 399 (Ind. Tax Ct. 1991); Mumma Bros. Drilling Co. v. Department of Revenue, 411 N.E.2d 676 (Ind. Ct. App. 1980); Indiana Dep't. of State Revenue v. Cave Stone, Inc., 457 N.E.2d 520 (Ind. 1983); Department of Revenue v. U. S. Steel Corp., 425 N.E.2d 659 (Ind. Ct. App. 1981); Graham Creek Farms v. Indiana Dep't of State Revenue, 819 N.E.2d 151 (Ind. Tax Ct. 2004); Mynsberge v. Indiana Dep't of State Revenue, 716 N.E.2d 629 (Ind. Tax Ct. 1999).

Taxpayer protests the assessment of use tax on purchases of various items of tangible personal property.

STATEMENT OF FACTS

Taxpayer is an Indiana metal fasteners manufacturer. The Indiana Department of Revenue ("Department") conducted an audit for the tax years 2008, 2009, and 2010. Pursuant to the audit, the Department determined that Taxpayer owed additional use tax. The Department found that Taxpayer had made a variety of purchases on which sales tax was not paid at the time of purchase nor was use tax remitted to the Department. Taxpayer disagreed with some of the audit results and protested. An administrative hearing was held, and this Letter of Findings results. Further facts will be supplied as required.

I. Sales and Use Tax – Manufacturing Exemption.

DISCUSSION

Taxpayer asserts that certain of its purchases are not subject to use tax because the purchases would qualify for the manufacturing equipment exemption as found in IC § 6-2.5-5-3.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

Indiana imposes an excise tax called "the state gross retail tax" (or "sales tax") on retail transactions made in Indiana. IC § 6-2.5-2-1(a). A person who acquires property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction. IC § 6-2.5-2-1(b). Indiana also imposes a complementary excise tax called "the use tax" on "the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction." IC § 6-2.5-3-2(a). "Use" means the "exercise of any right or power of ownership over tangible personal property." IC § 6-2.5-3-1(a). The use tax is functionally equivalent to the sales tax. See Rhoads v. Indiana Dep't of State Revenue, 774 N.E.2d 1044, 1047 (Ind. Tax Ct. 2002).

Generally, all purchases of tangible personal property by persons engaged in the direct production, manufacture, fabrication, assembly, or finishing of tangible personal property are taxable. [45 IAC 2.2-5-8\(a\)](#). An exemption from use tax is granted for transactions where the sales tax was paid at the time of purchase pursuant to IC § 6-2.5-3-4. There are also additional exemptions from sales tax and use tax. A statute which provides a tax exemption, however, is strictly construed against the taxpayer. Indiana Dep't. of State Revenue, Sales Tax Division v. RCA Corp., 310 N.E.2d 96, 97 (Ind. Ct. App. 1974). "Exemption statutes are strictly construed because an exemption releases property from the obligation of bearing its fair share of the cost of government." General Motors Corp. v. Indiana Dept. of State Revenue, 578 N.E.2d 399, 404 (Ind. Tax Ct. 1991) aff'd 599 N.E.2d 588 (Ind. 1992) (Internal citations omitted). Thus, "[W]here such an exemption is claimed, the party claiming the same must show a case, by sufficient evidence, which is clearly within the exact letter of the law." RCA, 310 N.E.2d at 100-101. Accordingly, the taxpayer claiming exemption has the burden of showing the terms of the exemption statute are met. General Motors, 578 N.E.2d at 404.

IC § 6-2.5-5-3(b) states:

Transactions involving manufacturing machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it **for direct use in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining, or finishing of other tangible personal property. (Emphasis added).**

Thus, the Legislature granted Indiana manufacturers a sales tax exemption for certain purchases, which are for "direct use in direct production, manufacture... of other tangible personal property." In enacting the exemption, the Legislature clearly did not intend to create a global exemption for any and all equipment which a manufacturer purchases for use within its manufacturing facility. "Fairly read, the exemption was meant to apply to capital equipment that meets the 'double direct' test." *Mumma Bros. Drilling Co. v. Department of Revenue*, 411 N.E.2d 676, 678 (Ind. Ct. App. 1980). The capital equipment "in order to be exempt, must (1) be directly used by the purchaser and (2) be used in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining, or finishing of tangible personal property." *Indiana Dep't. of State Revenue v. Cave Stone, Inc.*, 457 N.E.2d 520, 525 (Ind. 1983). "The test for directness requires the equipment to have an 'immediate link with the product being 'produced.'" *Id.* Accordingly, the sales tax exemption is applicable to that equipment which meets the "double direct" test and is "essential and integral" to the manufacture of taxpayer's tangible personal property. *General Motors*, 578 N.E.2d at 401. The application of Indiana's double-direct manufacturing exemptions often varies based on a determination of when a taxpayer's manufacturing process is considered to have begun and ended.

An exemption applies to manufacturing machinery, tools, and equipment directly used by the purchaser in direct production. [45 IAC 2.2-5-8\(a\)](#). Machinery, tools, and equipment acquired for "direct use in the direct production" is defined in [45 IAC 2.2-5-8\(c\)](#) as "manufacturing machinery, tools, and equipment to be directly used by the purchaser in the production process" that have "an immediate effect on the article being produced." Property has "an immediate effect" when it becomes "an essential and integral part of the integrated process which produces tangible personal property." [45 IAC 2.2-5-8\(c\)](#). [45 IAC 2.2-5-8\(d\)](#) excludes pre-production and post production activities by providing that "'direct use in the production process' begins at the point of first operation or activity constituting part of the integrated production process and ends at the point that the production has altered the item to its complete form."

[45 IAC 2.2-5-8\(g\)](#) further states:

"Have an immediate effect upon the article being produced": Machinery, tools, and equipment which are used during the production process and which have an immediate effect upon the article being produced are exempt from tax. Component parts of a unit of machinery or equipment, which unit has an immediate effect on the article being produced, are exempt if such components are an integral part of such manufacturing unit. The fact that particular property may be considered essential to the conduct of the business of manufacturing because its use is required either by law or by practical necessity does not itself mean that the property "has an immediate effect upon the article being produced". Instead, in addition to being essential for one of the above reasons, the property must also be an integral part of an integrated process which produces tangible personal property.

Additionally, [45 IAC 2.2-5-8\(j\)](#) provides:

Machinery, tools, and equipment used in managerial sales, research, and development, or other non-operational activities, are not directly used in manufacturing and, therefore, are subject to tax. This category includes, but is not limited to, tangible personal property used in any of the following activities: management and administration; selling and marketing; exhibition of manufactured or processed products; safety or fire prevention equipment which does not have an immediate effect on the product; space heating; ventilation and cooling for general temperature control; illumination; heating equipment for general temperature control; and shipping and loading.

Accordingly, tangible personal property purchased for the use in the production of a manufactured good is subject to sales and use tax unless the property used has an immediate effect on and is essential to the production of the marketable good. Thus, it is only the property that has an immediate effect on and is essential to the production that is directly used in the direct production of a marketable good and is exempt.

A. "Cold Forging Machine Accessories."

Taxpayer asserts that the "cold forging machine accessories" are exempt manufacturing equipment.

Taxpayer has not provided any information/documentation beyond its assertion that the "cold forging machine accessories" are used in the manufacturing process. Taxpayer has not provided any information about what are the specific items of equipment that are "accessories" to the "cold forging machine." Without specific information about what the equipment is and how the equipment is used during the production process, a determination about the exempt status of the equipment cannot be made. Therefore, it is not possible to conclude that the "cold forging machine accessories" are directly used in Taxpayer's production of its goods or that it has "an immediate effect on the article being produced."

Accordingly, Taxpayer's protest to the imposition of use tax on the "cold forging machine accessories" is respectfully denied.

B. "Safety Equipment."

The Department determined that use tax was due on Taxpayer's purchases of a "signal tower" for its "cold forging machine," of "ductwork," and "smog hog(s)." Taxpayer asserts that these purchases qualify as "safety equipment" and are exempt for use tax as explained examples in [45 IAC 2.2-5-8\(c\)](#).

[45 IAC 2.2-5-8\(c\)](#) states in relevant part that:

The state gross retail tax does not apply to purchases of manufacturing machinery, tools, and equipment to be **directly used by the purchaser in the production process provided that such machinery, tools, and equipment are directly used in the production process**; i.e., they have an immediate effect on the article being produced. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces tangible personal property.

–EXAMPLES–

...

(2) **The following types of equipment constitute essential and integral parts of the integrated production process and are, therefore, exempt. The fact that such equipment may not touch the work-in-process or, by itself, cause a change in the product, is not determinative.**

...

(F) **Safety clothing or equipment which is required to allow a worker to participate in the production process without injury or to prevent contamination of the product during production.**
(Emphasis added).

In *Department of Revenue v. U. S. Steel Corp.*, 425 N.E.2d 659 (Ind. Ct. App. 1981), the appellate court affirmed the trial court's findings, in favor of the taxpayer, U.S. Steel Corp., that it was entitled to the manufacturing exemption for its purchases of personal protective equipment, including, but not limited to, prescription safety eyeglasses, protective mittens, hardhats, goggles, masks, hoods, jackets and aprons. The U.S. Steel court refined the application of the "double direct standard" illustrated in *Indiana Dep't of State Revenue v. Harrison Steel Casting*, 402 N.E.2d 1276 (Ind. Ct. App. 1980) and focused on "whether the safety equipment is an integral part of manufacturing and operates directly on the product during production."

Acknowledging that the "U.S. Steel's safety equipment was one of the tools used by workers to accomplish the job," The U.S. Steel court concluded that:

Since steel can be made only because shielded workers deal directly with the raw materials of the product, the shields not only protect the worker but are a part of manufacturing which operates directly on the product during production.

U.S. Steel, 425 N.E.2d at 664.

As [45 IAC 2.2-5-8\(g\)](#) explains, however, "The fact that particular property may be considered essential to the conduct of the business of manufacturing because its use is required either by law or by practical necessity does not itself mean that the property has an immediate effect upon the article being produced." (Internal quotation marks omitted). Moreover, [45 IAC 2.2-5-8\(j\)](#) states that "tangible personal property used in... safety or fire prevention equipment which does not have an immediate effect on the product" are subject to tax.

1. "Signal Tower."

Taxpayer maintains that the "signal tower" signals how the "cold forging machine" is functioning—i.e., whether the machine needs maintenance. Taxpayer states that "since the manufacturing process can be loud, this provides a visual communication to anyone operating or around the machine." Specifically, Taxpayer states that "a green light means the machine is in operation. The orange light acts as a cautionary light... while... red [means] there is a problem and [the cold forging machine] needs to be examined.

In *U.S. Steel*, but for the shields, the workers would not have been able to directly handle the materials used in the production process. Taxpayer has not established how the "signal tower" itself relates to allowing the workers to participate in the production process without injury. Taxpayer has not adequately established how the "signal tower" is "required" for the workers to safely participate in the production process. While Taxpayer has made assertions that the "signal tower" might possibly provide some assurance of a safer operating environment, Taxpayer has not provided enough information to demonstrate that the "signal tower" is analogous to the shields in *U.S. Steel* discussed above. Therefore, Taxpayer has not met its burden to show that the "signal tower" is used in a manner that qualifies for the exemption from sales tax.

Accordingly, Taxpayer's protest to the imposition of use tax on the "signal tower" is respectfully denied.

2. "Ductwork and "Smog Hog."

Taxpayer maintains that the "ductwork" leads from the "cold forging machine" to the "smog hog" to collect the vapors, dust, and chemicals that are discharged from the "cold forging machine." Taxpayer states that this system "ensures clean air exists within the facility" and "greatly affects[s] the health of the employees."

During the protest, Taxpayer provided additional documentation—including pictures, OSHA guidelines, and manufacturer's information about the equipment—to demonstrate the nature of its use of "ductwork" and "smog hog." While [45 IAC 2.2-5-8\(j\)](#) states that "tangible personal property used in... safety or fire prevention equipment which does not have an immediate effect on the product" are subject to tax, during the course of the protest, Taxpayer provided specific information about the toxic nature of the oil vapors/mists that are released into the air by the "cold forging machine" and the OSHA [*sic*] requirements for employee safety requiring the removal of these vapors. Therefore, the "ductwork" and "smog hog" meet the requirements of the safety equipment as demonstrated in Example 2(F) of [45 IAC 2.2-5-8\(c\)](#).

Accordingly, Taxpayer's protest to the imposition of use tax on the "ductwork" and "smog hog" is sustained.

C. "Platforms."

Taxpayer asserts that the "platforms" are used by the employees for "trouble shooting" and are exempt manufacturing equipment.

During the hearing, Taxpayer's representative was asked to provide information about exactly what the employees do on the "platforms" and how often they use the "platform." However, Taxpayer has not provided any information/documentation beyond its assertion that the "platforms" are used for "trouble shooting" within the manufacturing process. Without specific information about how the equipment is used and who uses the equipment during the production process, a determination about the exempt status of the equipment cannot be made. Therefore, Taxpayer has not provided sufficient information to demonstrate that the "platforms" are directly used in Taxpayer's production of its goods or that it has "an immediate effect on the article being produced."

Accordingly, Taxpayer's protest to the imposition of use tax on the "platforms" is respectfully denied.

D. "AIM Computer System" and "AIM Software Maintenance."

The Department found that Taxpayer's purchase of the "AIM computer system" and "AIM software maintenance" were subject to use tax. The audit report states:

The POA explains, "The AIM Computer System is an integrated computer within all aspects of the business. It is utilized for manufacturing, accounting, monitoring, inventory levels, and sales." They further claim that it is 30[percent] exempt from sales tax based on its use in manufacturing. The thirty percent is unsupported and the computer system has not been shown to actually control the machinery during direct production. The POA explained that the computer system will not let production begin if the incorrect material is loaded on to a piece of equipment. The POA also explained the system will stop production when the machinery indicates low raw materials or other issues. The first function explained is a preproduction step that takes place prior to the appropriate raw material being introduced to the production process. The second function is an administrative task that has been shown to have a control on the manufacturing process, but not to have a direct impact on the article being produced.

It has not been shown that any of the listed items relating to the AIM system actually control the production equipment. They are part of a network and the network controls various aspects of the business, including non exempt functions. The POA has given explanation of some of the non exempt functions, but no documentation has been provided that could be used to determine what, if any, portion of the AIM system directly control the equipment used in direct production.

Taxpayer asserts that the "AIM computer system" and "AIM software maintenance" are partially exempt from use tax because they "assist with the manufacturing process in multiple ways." Taxpayer states as follows:

It first helps to determine if the proper coil is being placed inside the cold forging machines. If the material is incorrect, the AIM system will terminate processing the materials until corrected. In this regards this is a troubleshooting, efficiency, and reduction of material waste throughout the manufacturing process. This system also ensures that the proper size and shape of fastener is being produced by the customer specifications. There are approximately 8 to 9 terminals throughout the manufacturing facility.

As a component of this computer system, zebra printers are utilized to print bar codes to organize, store, and track the manufactured item throughout the process. An example of one of [the] tags it prints is being provided to you, showing production numbers, part number, size, grade, coil identification, etc.

The AIM computer also assists with tracking inventory, forecasting, and other administrative facets within the business. As presented to the auditor, it was conservatively deemed that 30[percent] of this computer system should be allocated to the manufacturing process and be exempt from sales and use tax.

Taxpayer also provided a breakdown of the total estimated usage for the "AIM computer system" as used in production. It simply states that the "AIM computer system" is estimated to be used in production 35[percent] of the time based upon these estimations of percentages of time the computer system is utilized in different areas, as follows: 5[percent] in "receiving into AIM system," 10[percent] in "part creation," and 20[percent] in "part processing."

1. "AIM Computer" Hardware, Software, and "Software Maintenance."

Taxpayer is respectfully reminded that the intent of the legislature is that, in general, all purchases of tangible personal property by persons engaged in the direct production, manufacture, fabrication, assembly or finishing of tangible personal property are taxable. IC § 6-2.5-5-3(b); [45 IAC 2.2-5-8\(a\)](#). The exemption only applies to manufacturing machinery, tools, and equipment directly used by the purchaser in direct production. Id. Exemption statutes are strictly construed against a taxpayer as long as the intent and purpose of the legislature is not thwarted, as provided in *Interstate Warehousing*, 783 N.E.2d at 250. The taxpayer claiming exemption has the burden of showing the terms of the exemption statute are met. *General Motors*, 578 N.E.2d at 404.

During the hearing, Taxpayer's representative was asked to provide information and documentation demonstrating what the "AIM computer systems" does and how much time is spent on each of the functions. However, Taxpayer has not provided any information/documentation beyond its assertion that the "AIM computer system" hardware and software are used within the manufacturing process. Without specific information/documentation about how the equipment is used to directly effect the equipment during the production process, a determination about the exempt status of the equipment cannot be made. Therefore, Taxpayer has not provided sufficient information to demonstrate that the "AIM computer system" hardware and software are directly

used in Taxpayer's production of its goods or that it has "an immediate effect on the article being produced."

Accordingly, Taxpayer's protest to the imposition of use tax on the "AIM computer systems" hardware, software, and software maintenance is respectfully denied.

2. "Zebra Printing and Labeling Equipment."

The Department found that Taxpayer's purchases of "shipping labels," "work in process labels" and zebra labeling equipment printing these labels were subject to use tax. It appears that Taxpayer is asserting that these labels are incorporated as a material part of its product and are exempt under IC § 6-2.5-5-6 because the labels contain some product information, the labels become part of the product.

IC § 6-2.5-5-6 provides an exemption from sales tax "if the person acquiring the property acquires it for incorporation as a material part of other tangible personal property which the purchaser manufactures... for sale in his business." Departmental regulation [45 IAC 2.2-5-14](#) states that in order to find that material is incorporated into the property produced for resale, "[t]he material must be physically incorporated into and become a component of the finished product, [t]he material must constitute a material or integral part of the finished product, and [t]he finished tangible personal property must be produced for sale by the purchaser." [45 IAC 2.2-5-14](#)(d).

While Taxpayer's labels may assist Taxpayer inventory control, the labels do not become "material parts" of Taxpayer's products. The labels do not "constitute a material or integral part of the finished product." The labels are not essential to Taxpayer's finished products and do not affect the performance or utility of those finished products. Thus, the labels do not benefit the ultimate consumer. The labels are merely the ancillary means by which the Taxpayer's finished product finds its way to the ultimate consumer. Therefore, Taxpayer has not shown that the labels qualify for the "incorporation exemption" set out in IC § 6-2.5-5-6 and [45 IAC 2.2-5-14](#)(d)(2).

It appears that Taxpayer is also asserting that the "zebra printer" equipment that prints the "shipping labels" and "work in process labels" is exempt pursuant to IC § 6-2.5-5-3(b) because the equipment is directly used in the direct production of the taxpayer's product. However, since these labels have been determined to not be part of the finished product, the printing equipment used in producing the labels does not impact the finished product. Thus, the printer equipment used for these activities is not exempt.

Accordingly, Taxpayer's protest to the imposition of use tax on the "shipping labels," "work in process labels," and "zebra printer" is respectfully denied.

E. "Scrap Carts."

The Department found that use tax was due on Taxpayer's purchase of "scrap carts."

Taxpayer maintains that the "scrap carts" are used to accumulate and store metal slivers and waste that are the result of the manufacturing process and, therefore, qualify for the manufacturing equipment exemption.

While equipment that is used to actually extract the waste from the production process can qualify for the manufacturing exemption, any equipment that is used to collect, transport, store, or otherwise process the waste after its extraction is subject to tax. See *Graham Creek Farms v. Indiana Dep't of State Revenue*, 819 N.E.2d 151 (Ind. Tax Ct. 2004) (exempting equipment that actually removes the waste from the production process, but not extending the exemption to equipment that is used to transport the waste that has been removed from production.) Since the "scrap carts" are used to collect, store, and transport waste of the manufacturing process that has been extracted from the production process, the "scrap carts" are used in a post-production activity and are taxable.

Accordingly, Taxpayer's protest to the imposition of use tax on the "scrap carts" is respectfully denied.

F. "Tapper Chutes."

Taxpayer asserts that the "tapper chutes" are used to transport the product that has been tapped and threaded from the "threading area" into the "green carts" that take the product to the "degreaser area" and, therefore, are exempt manufacturing equipment.

During the hearing, Taxpayer provided pictures and other documentation to demonstrate the nature of its use of the "tapper chutes." Taxpayer's documentation demonstrates that the "tapper chutes" are used to transport the product from one step in the production process to transportation/temporary storage equipment, the "green carts," that transports the product to the next step in production. Therefore, pursuant to [45 IAC 2.2-5-8](#)(f)(3), which provides that "transportation equipment used to transport work-in-process or semi-finished materials to or from storage is not subject to tax if the transportation is within the production process," the "tapper chutes" qualify for exemption.

Accordingly, Taxpayer's protest to the imposition of use tax on the "tapper chutes" is sustained.

G. Forklift Rentals.

Taxpayer asserts that the amount it pays to rent forklifts qualify for exemption because the forklifts are exempt under the manufacturing equipment exemption. Taxpayer states that it rents several forklifts that have been designated and identified to the specific area where the forklifts are used. Taxpayer rents several forklifts which it has designated as "forklifts A" that are at a third party's location. These forklifts are used by the third party to move Taxpayer's product. Taxpayer rents four forklifts which it has designated as "forklifts PC" that are used to move product from the temporary "hold area" to the "production control area." Taxpayer rents four forklifts which it has designated as "forklifts MFG" that are used to move spools of coil from storage to the "cold forging machine."

[45 IAC 2.2-5-8](#)(f), states:

- (1) Tangible personal property used for moving raw materials to the plant prior to their entrance into the production process is taxable.
- (2) Tangible personal property used for moving finished goods from the plant after manufacture is subject to tax.
- (3) Transportation equipment used to transport work-in-process or semi-finished materials to or from storage is not subject to tax if the transportation is within the production process.
- (4) Transportation equipment used to transport work-in-process, semi-finished, or finished goods between plants is taxable, if the plants are not part of the same integrated production process.

The same regulation, [45 IAC 2.2-5-8\(g\)](#) provides the following examples of situations in which a fork-lift is used both in an exempt manner and in a non-exempt manner:

- (3) A forklift is used exclusively to move work-in-process from a temporary storage area in a plant and to transport it to a production machine for processing. Because the forklift functions as an integral part of the integrated system comprising the production operations, it is exempt.
- (4) A forklift is used exclusively to move finished goods from a storage warehouse and to load them on trucks for shipment to customers. The forklift is taxable because it is used outside the integrated production process.
- (5) A forklift is regularly used 40[percent] of the time for the purpose described in Example (3) and 60[percent] of the time for the purpose described in Example (4). The taxpayer is entitled to an exemption equal to 40[percent] of the gross retail income attributable to the transaction in which the forklift was purchased.

1. "Forklifts A."

Taxpayer rents several forklifts which it has designated as "forklifts A" that are at a third party's location. The third party performs a heat treatment to the product and returns the product back to Taxpayer. As part of the contract with the third party, Taxpayer is required to provide the forklifts. These forklifts are used by the third party to move Taxpayer's product at the third party location. The Department found that use tax was due on these forklift rentals.

Taxpayer asserts that its rental of the forklifts is exempt because the forklifts are transporting "work in process." Taxpayer maintains that it does not matter that a third party is using the forklifts and performing a part of the processing since the product is returned back to Taxpayer. Taxpayer cites to *General Motors Corp. v. Indiana Dep't of State Revenue*, 578 N.E.2d 399, 404 (Ind. Tax Ct. 1991). Taxpayer states:

In the *General Motors* case, the Indiana Tax Court concluded that the transportation equipment was both essential to transforming the material into a marketable product and was integral in "the ongoing process of transformation." Additionally, the court held that materials used to transport work in process from one plant to another plant would be exempt as an essential and integral part of the integrated production process of manufacturing finished goods. In this case both facilities were owned an[d] operated by General Motors; however, the case is silent in regards to the transportation to a third party facility. Thus we believe it does not matter whether the materials are transported to a third party facility, as long as, the production continues when the materials are sent back to [Taxpayer's] facility.

However, *General Motors Corp.* is not relevant to Taxpayer's situation because unlike the plants in *General Motors Corp.* that were owned by the same entity, Taxpayer's plant and the "heat treatment plant" are not owned by Taxpayer. Pursuant to IC § 6-2.5-5-3(b), "Transactions involving manufacturing... equipment are exempt... if the **person acquiring that property** acquires it **for direct use in the direct** production... of other tangible personal property." (**Emphasis added.**) In *Mynsberge v. Indiana Dep't of State Revenue*, 716 N.E.2d 629, 631 (Ind. Tax Ct. 1999), the Tax Court determined that the manufacturing exemption for the utility services and commodities only applies when the purchaser of the utility services and commodities is also the consumer of those services and commodities. Thus, the manufacturing exemptions apply only when the purchaser of the equipment is also the user of that equipment in their manufacturing process.

Accordingly, Taxpayer's protest to the imposition of use tax on its rental of several forklifts designated as "forklifts A" is respectfully denied.

2. "Forklifts PC."

Taxpayer rents four forklifts which it has designated as "forklifts PC" that are used to move product from the temporary "hold area" to the "production control area." The Department determined that these forklifts were used in a post-production activity and subjected them to tax. Taxpayer asserts that the forklifts are moving "work in process" and qualify for exemption.

During the hearing, Taxpayer provided pictures and other documentation to demonstrate the nature of its use of these forklifts. Taxpayer documentation demonstrates that the "forklifts PC" are used to transport the product from one step in the production process to the next step in the production process. Therefore, pursuant to [45 IAC 2.2-5-8\(f\)\(3\)](#), which provides that "transportation equipment used to transport work-in-process or semi-finished materials to or from storage is not subject to tax if the transportation is within the production process," these forklifts qualify for exemption.

Accordingly, Taxpayer's protest to the imposition of use tax on its rental of four forklifts designated as "forklifts

PC" is sustained.

3. "Forklifts MFG."

Taxpayer rents four forklifts which it has designated as "forklifts MFG" that are used to move spools of coil from storage to the "cold forging machine."

While Taxpayer's rental of these forklifts may be necessary to Taxpayer's process, the fact that a machine is essential to the conduct of the business of manufacturing by practical necessity does not itself mean that the machine is essential and integral to the direct production of the final product. [45 IAC 2.2-5-8\(g\)](#). Taxpayer's production process begins after the materials have been introduced to the "cold forging machine"; therefore, any transportation of the raw materials prior to its entry into the "cold forging machine" is a pre-production activity. See [45 IAC 2.2-5-8\(c\)](#), Example 1 (describing a process of manufacturing aluminum pistons. It states, in relevant part, that the manufacturing process begins after the removal of the raw aluminum from storage, with the melting of the raw aluminum and the production of castings in the foundry.) See also [45 IAC 2.2-5-8\(c\)](#), Example 4 (illustrating types of equipment in Example 1 that are not exempt because of a "lack of an essential and integral relationship with the integrated production system.") See also [45 IAC 2.2-5-8\(c\)](#), Part (G) of Example 4 (listing as non-exempt "equipment used to remove raw materials from storage prior to introduction into the production process.")

Accordingly, Taxpayer's protest to the imposition of use tax on its rental of four forklifts designated as "forklifts MFG" is respectfully denied.

FINDING

Taxpayer's protest is sustained in part and denied in part. Taxpayer's protest to the imposition of use tax on the "ductwork" and "smog hog(s)" is sustained, as discussed in subpart B(2). Taxpayer's protest to the imposition of use tax on the "tapper chutes" is sustained, as discussed in subpart F. Taxpayer's protest to the imposition of use tax on its rental of four forklifts designated as "forklifts PC" is sustained, as discussed in subpart G(2). In all other respects, Taxpayer's protest is denied.

Posted: 07/25/2012 by Legislative Services Agency

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